



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

November 20, 2007

Terry O. Patton, Registered Agent
Cascade Falls, LLC
814 Blessed Way
Knoxville, Tennessee 37923

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5268

Subject: DIRECTOR'S ORDER NO. WPC07-0234
CASCADE FALLS, LLC
KNOX COUNTY, TENNESSEE

FILE

Dear Mr. Patton:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Knoxville
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
CASCADE FALLS, LLC)	
)	
)	
)	
RESPONDENT)	CASE NO. WPC07-0234

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Cascade Falls, LLC (hereinafter the "Respondent") is an active limited liability corporation licensed to conduct business in the State of Tennessee and is the owner/developer of a residential subdivision described as Cascade Falls (hereinafter "the site") located on Ball Camp Pike in Knox County. Service of process may be made on

the Respondent through its Registered Agent, Terry O. Patton, at 814 Blessed Way, Knoxville, Tennessee 37923.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, has violated the Act.

V.

Meadow Creek is referred to herein as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications For Surface Waters,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Meadow Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Additionally, Meadow Creek is listed as impaired for siltation due to land development and Municipal Separate Storm Sewer System (MS4) discharges.

VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

FACTS

VII.

On March 12, 2007, division personnel from the Knoxville Environmental Field Office (K-EFO) conducted a site inspection. Division personnel noted that Erosion Prevention and Sediment Control (EPSC) measures across the site were inadequate, unmaintained, had not been installed in accordance with the SWPPP, and that sediment was not being retained on site. The storm sewer inlets had liners installed, but were full of sediment. Sediment-laden water was discharging from a sediment retention basin into a wet weather conveyance that discharges off site. The area near the basin inlet was severely eroded and several building lots had not been stabilized, allowing eroded sediment to leave the site.

VIII.

On March 13, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations noted during the March 12, 2007, site inspection. The NOV instructed the Respondent to control and treat sediment on site, remove sediment from the storm sewer inlets, repair the existing inlet protection or install alternative storm sewer inlet protection, and remove the soil that had accumulated near the storm sewer inlets. The NOV further instructed the Respondent to provide a plan for the treatment of drainage from the site to prevent sediment discharges and to stabilize the sediment basin inlet.

IX.

On October 5, 2007, division personnel conducted a follow-up site inspection and noted that conditions at the site were unchanged since the previous inspection. EPSC measures across the site were inadequate, un-maintained, not in accordance with the SWPPP, and sediment was not being retained on site. The storm sewer inlets had liners installed, but were full of sediment. Several lots at the site had not been stabilized and did not have effective EPSC measures installed. Concentrated flow laden with sediment was being discharged from several lots without check dams, sediment traps, or other such measures installed. Disturbed areas that had been idle for more than 15 days had not been stabilized as required by the TNCGP.

X.

On October 8, 2007, the division issued a second NOV to the Respondent for the violations noted during the October 5, 2007, site inspection. The NOV again instructed the Respondent to control and treat sediment on site, clean the storm sewer inlets, repair the existing inlet protection or install alternative storm sewer inlet protection and remove the sediment that had accumulated near the storm sewer inlets. The NOV further instructed the Respondent to install appropriate EPSC measures on all disturbed lots to prevent sediment from leaving the site, and stabilize all areas that were to be idle for more than 15 days. The Respondent was instructed to provide an updated site map, certified by a licensed Professional Engineer, with all sediment and erosion control structures and best management practices reflected and to submit inspection reports on a

weekly basis until notification from the division that the reports were no longer necessary.

XI.

During the course of investigation, the division incurred DAMAGES in the amount of THREE HUNDRED SIXTY FOUR DOLLARS AND EIGHTY-FOUR CENTS (\$364.84).

VIOLATIONS

XII.

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondent has violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

ORDER AND ASSESSMENT

XIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109,

69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within 7 days of receipt of this ORDER, establish and maintain effective EPSC measures on-site such that sediment is not allowed to leave the site or enter waters of the state.
2. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondent shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the K-EFO at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
4. The Respondent is hereby assessed a CIVIL PENALTY in the amount of ELEVEN THOUSAND FIVE HUNDRED DOLLARS (\$11,500.00).
 - a. The Respondent shall pay TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) to the division within THIRTY (30) DAYS of receipt of this Order.

- b. The Respondent shall pay TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
 - c. The Respondent shall pay TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
 - d. The Respondent shall pay TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.
5. The Respondent shall pay DAMAGES to the division in the amount THREE HUNDRED SIXTY FOUR DOLLARS AND EIGHTY FOUR CENTS (\$364.84).

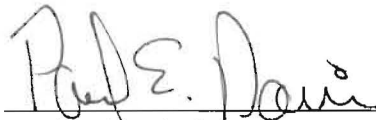
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and

all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 20th day of November, 2007.

A handwritten signature in dark ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401

Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.